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STATEMENT OF JAN VANTASSEL, ESQ. PLANNING AND DEVELOPMENT COMMITTEE February 7, 2011

OPPOSITION TO PROPOSED BILLS 5142 and 5259 MANDATING PUBLIC HEARINGS ON GROUP HOMES

I am the Executive Director of the Connecticut Legal Rights Project, Inc. (CLRP) a statewide not for profit organization that provides free legal services to low income adults with psychiatric disabilities.

CLRP does not support the expansion of group homes for adults with psychiatric disabilities. However, I must advise this committee that the public hearings mandated by these proposed bills, while not fully articulated in their current form, would in all probability violate both state and federal law. This is because group homes provide housing for persons with disabilities, and as such, they are subject to specific legal protections.

The U.S. Supreme Court has held that, absent a demonstration of a rational basis for requiring hearings before people with disabilities can move into a neighborhood, the requirement for a hearing violates the Fourteenth Amendment because it discriminates against people with disabilities. *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). The U.S. Constitution does not recognize persons with disabilities as a protected class, and therefore applied a lower standard of review, rational state interest, in this case.

In contrast, the Equal Protection clause of the Connecticut Constitution, as amended by Article XXI in 1984, specifically recognizes persons with physical or mental disabilities as a protected class, and as such, prohibits "segregation or discrimination in the exercise or enjoyment of his or her civil or political rights." As a constitutionally protected class, the State must meet a higher standard of proof to justify actions directed at this class of persons. It must demonstrate a compelling state interest to single out this class of persons, a standard that is rarely if ever met.

The underlying purpose of these bills cannot be discerned from their content. However, there is no question that they reflect a presumption that group homes, which provide housing for persons with disabilities, present some unusual problems or concerns for a neighborhood that warrants imposing additional procedural requirements. Such a presumption infringes upon the constitutionally protected civil rights of persons with disabilities. No one would introduce a bill requiring a hearing before a group of African Americans, Latinos, or women moved into a neighborhood. The same constitutional principle applies to people with disabilities.

In addition, the Fair Housing Amendments Act, the Americans with Disabilities Act and the Rehabilitation Act all prohibit discrimination against people with disabilities by public entities including the state and its towns. All three statutes apply to municipal zoning decisions. *Regional Economic Community Action Program v. City of Middletown*, 294 F.3d 35, 46 (2nd Cir. 2002). "Although the City certainly may consider legitimate safety concerns in its zoning decisions, it may not base its decisions on the perceived harm from such stereotypes and generalized fears. As the district court found, a decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decision-makers personally have no strong views on the matter." *Innovative Health Systems v. City of White Plains*, 117 F.3d 37, 49 (2nd Cir. 1997).

The Americans with Disabilities Act also establishes an affirmative duty on the state to provide services in the most integrated community setting. That mandate, interpreted and upheld in the U.S. Supreme Court decision of *Olmstead v. L.C.*, 527 U.S. 581 (1999), means that persons with disabilities must have the opportunity to live in a setting that maximizes their opportunities to interact with persons who do not have disabilities and participate in typical day to day community activities. In order to meet this responsibility, the State must provide group homes for persons that require that level of restricted living.

This legislation, which imposes a new and different procedural burden for housing that would serve persons with disabilities, provides no rationale for the mandate. However, in order to meet the constitutional standard, the state must demonstrate a compelling state interest for the differential treatment. It is difficult to imagine a rationale which could meet this standard since every community already has planning and zoning requirements which should address any legitimate issues related to siting of a group home. Any questions or concerns related to the location of group homes should be addressed through those procedures, applied in a fair a non-discriminatory manner.

I urge this committee to reject these bills.